

July 19, 2010

Name
Company
Address
City, State Zip

**SUBJECT: PRE-QUALIFIED ENGINEERING SERVICES PROGRAM
REQUEST FOR QUALIFICATIONS**

Dear XXXX:

The City of Santa Barbara is currently updating its Pre-qualified Engineering Services (PES) Program that pre-qualifies engineering service firms to assist the Public Works Department in undertaking and carrying out the completion of the City's Capital Improvement Program projects.

The PES Program provides a convenient and more efficient way to obtain assistance with engineering and construction management services for the City's sewer, water, street, parking lot, waterfront, parks and other capital improvement projects.

The purpose of the pre-qualified list and the multi-year nature of the program are to save time in selecting engineering service firms and administering agreements. This approach also makes efficient use of engineering service firms who become very proficient at working with appropriate City staff and following the numerous procedures and requirements necessary to design and construct City projects.

The City is now inviting qualified general civil, water resources, and structural engineering firms to submit a Statement of Qualifications to provide engineering and construction management services for the City. The consultants selected will be eligible to provide these services for an approximate three-year period under the direction of City Engineering staff. Described in Attachment 1 is a typical list of services to be provided by the consultant and the City.

The selected consultants must have the demonstrated ability to provide high quality professional services on time, within budget, and with minimal direction, supervision or assistance. Duties will consist of engineering and management tasks associated with a group of Public Works projects, including project planning, cost control, scheduling, administration, processing projects through all required reviews, obtaining required approvals/permits, all phases of design, preparation of plans, specifications and estimates, coordination with other City departments, processing construction contracts for award, construction management, construction inspection, coordination of related consultant work, and management of any necessary sub-consultants.

A select number of firms will be invited for an interview following a review of their submitted Statement of Qualifications, and based on the future needs of the City's

Capital Improvement Program. During the three-year period, individual contracts may then be negotiated with pre-qualified firms to provide engineering services for specific projects. Pre-qualified firms are not guaranteed contracts with the City. Generally for contracts with fees larger than \$250,000, or for specialty projects, the City may not use pre-qualified firms.

Anticipated completion of the selection process and final approval of the selected engineering service firms is targeted for mid-October 2010.

For a list of upcoming FY 2011 through FY 2016 Capital Improvement Projects, please refer to the City's website at <http://www.santabarbaraca.gov/Government/Finance/Budget/CIP.htm>.

The City reserves the right to contract for engineering services for any project outside of this selection process and may terminate agreements if the services provided are unacceptable.

STATEMENT OF QUALIFICATIONS REQUIREMENTS

The complete Statement of Qualifications package should not exceed 40 pages total. Firms responding shall submit six (6) copies of their Statements of Qualifications, and must include the items listed below:

1. Description of the firm's team, including the names, classifications and qualifications of key personnel assigned to the City, and an organizational chart showing how the team will work together, as well as with outside firms (type of engineering service only) necessary to complete all tasks associated with completing a group of projects. Summarize the areas of expertise of key personnel.
2. Indicate the professional services discipline or disciplines of the firm, i.e., general engineering, structural, and/or water resources.
3. Outline of recent projects completed that best illustrate the firm's capabilities, and what role(s) the firm had in the project. The projects referenced must be those for which the firm had major responsibility for design, construction administration, field engineering or inspection.
4. Client references, including the name, address and telephone number of the person to contact for reference.
5. The proposed Program Manager, who will be the City's primary contact, and other key staff and their office locations.
6. A demonstrated Quality Assurance Program, with examples.
7. A description of the firm's ability to develop and maintain good working relations with boards, commissions, City departments, outside agencies, and the public, with examples of past performance.
8. Firm's hourly rate schedule for each classification of personnel to be assigned to City projects. (Please do **not** include expert witness rates in the schedule.)

9. Scope of services that would be required by outside firms. Specific outside firms can be identified after the initial selection process.
10. Identification of nearby office locations, telephone numbers, and type of staff located at each nearby office. A full-service office in Santa Barbara is highly desirable.
11. Other information that will assist the City in selecting the most qualified firms.

SELECTION PROCESS

From the Statements of Qualifications received, the City will select up to 16 of the most qualified firms for interviews. The selection will be based on the following:

1. The program team's qualifications and ability to perform as outlined in the Request for Qualifications, based on the information provided by the firm and client references.
2. The firm's key staff qualifications, knowledge of local conditions, and ability to perform the work as outlined above.
3. The firm's responsiveness and availability to City staff, and the ability of the firm's key staff to effectively and efficiently design a project and obtain approval through the City's design review process and/or other permitting agencies.
4. The firm's understanding of the services requested, as demonstrated by their approach, responsiveness to the Request For Qualifications, and their ability to meet the City's desired time frame.
5. Based on client references, the firm's performance on recently completed projects.
6. The firm's ability to assist in meeting the City's Disadvantaged Business Enterprise (DBE) goals set for federally funded projects.

On an as-needed basis, the City will enter into negotiations with consultant firms receiving the highest rating following the interviews. If such negotiations are unsuccessful, the City will enter into negotiations with the firm or firms receiving the next highest rating. It is anticipated that the final selection of pre-qualified engineering firms will be from the general, structural, and water resources disciplines.

As part of the consideration for entering into contracts with the successful firms, the firms are required to obtain insurance with an insurer or insurers satisfactory to the City. All firms must review the required insurance provisions with their insurance agents or brokers to ensure compliance. Failure to meet the insurance regulation shall result in the firm's disqualification. A sample contract is shown in Attachment 2.

The engineering service firm is also required to possess or obtain a current business license from the City prior to execution of the agreement with the City for engineering services.

Statements of Qualifications shall be submitted to:

Heidi Braunger, Project Engineer
Public Works Department, Engineering Division
630 Garden Street
P.O. Box 1990
Santa Barbara, CA 93102-1990

Statements of Qualifications must be submitted no later than 4:00 p.m. on Tuesday, August 24, 2010. Interviews are tentatively scheduled for late September 2010. You will be notified of any change to this date.

If you have any questions, please feel free to contact Heidi Braunger, Project Engineer, at hbraunger@santabarbaraca.gov.

Sincerely,



Pat Kelly
Assistant Public Works Director/City Engineer

JE/HB/cc

Attachments: 1. (Typical) Services to be Provided by Consultant and City
 2. Sample Service Contract

cc: Christine F. Andersen, Public Works Director
 Browning Allen, Transportation Manager
 Jim Dewey, Facilities Manager
 Rebecca Bjork, Water Resources Manager
 Cathy Taylor, Water System Manager
 Chris Toth, Wastewater System Manager
 Joshua Haggmark, Principal Civil Engineer
 John Ewasiuk, Principal Civil Engineer
 Brian D'Amour, Supervising Civil Engineer
 Mark Wilde, Supervising Civil Engineer
 Brian Bosse, Housing and Redevelopment Manager

ATTACHMENT 1

(TYPICAL) SERVICES TO BE PROVIDED BY CONSULTANT AND CITY

BY CONSULTANT

The services to be provided by the consultant shall include, but not be limited to, those listed below. The services include specific tasks as well as goals that the consultant is expected to strive to reach.

1. Provide a Program Manager who will be held responsible for all work performed by the consultant. The Program Manager will provide project management, including:
 - a) Defining tasks, schedules, and costs (including evaluation of City-provided input and recommendations that will result in a better overall project);
 - b) Monitoring work progress and resolving problems;
 - c) Maintaining up-to-date schedules for all assigned projects;
 - d) Scheduling and attending project review meetings with other appropriate City staff, as needed, covering the following (action minutes to be prepared by the consultant):
 - i) Discussion of project definition, scope, and costs;
 - ii) Project scheduling, planning, and concepts;
 - iii) Review of plans at conceptual, preliminary, and final stages of completion, including cost estimates;
 - iv) Status of pending reviews, approvals, and permits;
 - v) Review of plans, specifications, and estimates before 100% submittal;
 - vi) Implementation of firm's Quality Control Program including, at a minimum, the consultant (individual other than project engineer) thoroughly checking that the plans and specifications are complete, accurate, in the proper format, and ready for advertising; and
 - vii) Keeping City Engineering Division staff and other departments informed by producing written meeting minutes that record agreed actions and by direct contacts, as necessary.
 - e) Incorporate the Public Works Construction Standards into all designs and suggest revision as appropriate;
 - f) Coordinate directly with sponsoring City departments to receive their input, address their concerns, keep them informed regarding project status, obtain their concurrence on project scope, cost, schedule, and obtain their approval of concepts and final design. Obtain concurrence from the sponsoring department and the City Engineer regarding the method of coordination with sponsoring departments;
 - g) Focus the efforts of the consultants and City staff to expedite the design and construction of high quality, cost effective projects that meet the needs of the City. Develop recommendations for City approval after considering alternate solutions;
 - h) Be sensitive and responsive to the desires/needs of the Engineering Division, sponsoring departments, elected and appointed bodies, and the public. Good judgment is required to balance sometimes competing or conflicting desires/needs; and
 - i) Maintain quality control on all work of the consultant, sub-consultants, and construction contractors related to assigned projects. Implement a program of claims avoidance and claims management.
2. Provide all necessary office and field surveying (when required by the City) for the projects. Obtain data on existing conditions necessary to design and prepare plans for assigned projects. Field verify data as appropriate.
3. Work with the City's real property agents or real property consultants to define the temporary *and* permanent easements, and rights of entry needed for assigned projects. Provide information needed for acquisitions.

4. Coordinate with utility companies to determine existing locations of their utilities and any conflicts between the City's proposed construction and existing utilities, future work by utility companies, and construction scheduling conflicts. Resolve utility issues so as not to delay projects while minimizing costs.
5. Identify and obtain all necessary approvals from City, County, State, and Federal regulatory agencies; prepare related documents; attend any meetings necessary to obtain approvals and make modifications to the project as necessary.
6. Furnish the City with quality plans, specifications, and engineers' estimates (PS&Es) for all assigned projects to the standards expected of a competent professional engineering firm. Plans must conform to the City's drafting standards and must be drawn on 24" x 36" sheets and be either ink on mylar or appropriate paper, as directed. The plans must be signed by, and stamped with, the consultant's seal and signature. No "sticky backs" are permitted. Specifications must be delivered sealed, stamped, signed, and ready for advertising for bids for construction. The City specification template, with standard contract documents and general provisions, must be used for each project. If the plans are computer drafted they shall be prepared using AutoCAD software, with the City's AutoCAD drafting standard, including graphic style, blocks, and standard layer names.
7. Coordinate advertising for bids and reproduction of plans and specifications, arrange and conduct any necessary pre-bid conferences, prepare and process any necessary addenda, analyze bids, and negotiate with bidders, if necessary.
8. Provide construction administration, field engineering, and inspection services, which include the following:
 - a) Prepare for, and chair, a preconstruction conference and other meetings with the contractor, as necessary, to provide for smooth construction on schedule and within budget;
 - b) Review shop drawings, traffic control plan, and other submittals for general conformance with contract documents and perform contract drawing and specification interpretation as necessary;
 - c) Keep several steps ahead of the contractor to detect and resolve problems or issues before they delay construction or result in extra costs;
 - d) Provide a resident engineer and inspectors, as necessary;
 - e) Provide field surveying, as necessary, to establish control and monitor construction or project.
 - f) Prepare bulletins, change orders, memoranda to contractor, and other correspondence necessary to maintain control over the construction contract. Provide change order evaluations, negotiations, recommendations for approval by the City, and maintain a record of authorized changes;
 - g) Review contractor's progress payment requests and prepare progress payment packages for approval by the City Engineer;
 - h) Verify as-installed field data and prepare construction record drawings. Furnish a marked-up set of construction plans containing the specific information required to update the City's utility atlases;
 - i) Perform the following reviews and meetings:
 - i) Spot review the contractor's payroll for wage compliance;
 - ii) Review the contractor's construction schedule submittal;
 - iii) Hold weekly construction meetings with the contractor, as necessary for the project, and prepare and distribute meeting minutes; and
 - iv) Monitor the contractor's actual construction progress against the contractor's submitted schedule. Review updated/revised construction schedules as needed.
 - j) Coordinate and administer construction inspection and testing;
 - k) Coordinate the contractor's actual construction progress against the contractor's submitted schedule. Review updated/revised construction schedules as needed;

- l) Maintain records of construction including photographs, daily inspection reports correspondence, and verbal contacts with the contractor and other associated with the project, claims avoidance actions, potential claims, design changes, and test results;
 - m) Perform final inspection for acceptance of the contract work by the City. Prepare punch lists and monitor corrective work;
 - n) Prepare releases regarding street closures, if necessary; and
 - o) Prepare project close-out files, report, and submit them to the City.
9. Use computers in the following ways:
 - a) All documents shall be prepared in Microsoft Word software, with the version to be compatible with that used by the Engineering Division. Document files on compatible disks, CD's, or email shall be provided to the City when requested;
 - b) Use total station surveying, or GPS system, and a computer-aided drafting system that are compatible with the City's system. If plans are computer drafted, the PS&E package shall include documents on CD for the City's disk archive; and
 - c) Provide survey data in the proper format for the City's computer mapping database.
10. Prepare all billings to the City for individually assigned projects in accordance with the City Engineering Division's standard invoice requirements.

BY CITY

The services to be provided by the City shall include, but not necessarily limited to, the following:

1. Provide information on benchmarks for project-related surveys.
2. Provide the Engineering Division's Drafting Standards, Procedures Manual and Construction Standards.
3. Provide the standard template for the specifications.
4. Provide general direction to the consultant through the Engineering Division staff who will monitor the consultant's performance and provide periodic performance evaluations.
5. Provide access to the Engineering Division's drawing vault, past project files and library, and train the consultant staff in the proper use of the above-mentioned for research.
6. Provide blank drawing sheets imprinted with the City title block format, or AutoCAD drawings of the City's border format.
7. Provide training to the consultant's inspectors on field measurements taken to update the City's utility atlases.
8. Print final plans and specifications.
9. Hire specialty consultants directly as appropriate for assigned projects.

ATTACHMENT 2

City of Santa Barbara, Service Contract with Name of Consultant/Firm for Project Name

This Contract is entered into on XXXXXXXXXXXX, 20XX by and between:

The City of Santa Barbara, a Municipal Corporation, referred to herein as the "City";

and,

Name of Consultant/Firm, a California Corporation, referred to jointly herein as the "**Contractor**",

WITNESSETH:

WHEREAS, Contractor has the special background, training and experience required by City, and in consideration of the mutual covenants, conditions, promises and agreements, herein, the City and Contractor **AGREE**:

1. SCOPE OF CONTRACTOR SERVICES

a. Contractor agrees to [[[SAMPLE LANGUAGE provide construction management services to the City for the construction of a 574-space parking structure located in the City's Lot No. 6 Parking Lot]]] as described in **more detail in** the attached scope of services (Exhibit A) dated XXXXXXXXXXXX.

[Optional paragraph]

b. The City has been advised and enters into this Contract understanding that Name of Project Manager for Consultant has been designated the project manager for Project Name and that the Project Manager will have direct responsibility for interacting with City staff and delivering Contractor's services to the City under this Contract. Contractor shall not substitute nor otherwise allow any other person to serve in place of the Project Manager without the written consent of the City Public Works Director, or City Engineer, who shall have sole discretion as to whether the proposed substitution is acceptable. Should Contractor substitute or allow any unauthorized person to serve as project manager, Contractor shall have no right to any monies for services provided by that unauthorized person and City shall also have the right to immediately terminate this Contract.

2. COMPENSATION

a. The total compensation for all services provided pursuant to this Contract, including all extra services as defined in Section 3 hereof and reimbursable expenses, shall not exceed the sum of **\$XXXXXXXX** without the express written approval of City Council of the City of Santa Barbara. The basic contract is for **\$XXXXXXXX** and the total that may be claimed for Extra Services under Section 3 of this Contract shall not exceed **\$XXXXXXXX**. This Contract provides the exclusive means of payment and reimbursement for costs to Contractor by the City.

b. Changes in personnel or in rates of compensation set forth in Exhibit A may be made only after written notice to and written approval by the City Public Works Director.

c. Where travel costs are included in Exhibit A, only the actual travel costs (at fare, rate per mile or lump sum approved), and/or actual expenses pursuant to the provisions of the Contract and within guidelines approved by the City Finance Director will be reimbursed.

d. Contractor may be reimbursed for such other necessary costs, including actual costs of copies, printing, postage, shipping and documents expense, and all costs of other materials, equipment, services and supplies, as approved and required to complete the work, according to the attached Exhibit A.

e. Compensation for Extra Services of Contractor authorized in accordance with Section 2 shall be paid to Contractor by City in accordance with the fee schedule set forth in Exhibit A. Contractor shall only be entitled to payment for Extra Services under this Contract if Contractor has obtained authorization required under Section 3 below.

f. Contractor shall submit itemized statements, which shall include a detailing of the number of hours spent on each task and copies of all subcontractors' invoices, to request payment in accordance with the standard billing format issued by the City Public Works Department. Contractor shall keep records concerning payment items on a generally recognized accounting basis and such records shall be maintained for a period of 3 years following the completion of the work assigned. Such records shall be made available for copying, inspection or audit by City employees or independent agents during reasonable business hours.

3. EXTRA SERVICES OF CONTRACTOR

Prior to performing any services other than those described in Exhibit A ("Extra Services"), Contractor shall submit a written request for Extra Services and obtain the written approval of the City Public Works Director or his designee. The request for Extra Services shall at minimum include a description of the services to be performed, the reason why the Extra Services are needed or required, a schedule for completion of the proposed Extra Services, and a not-to-exceed amount for performance of the proposed Extra Services. Each approved Extra Services request shall be billed separately.

4. TIME OF BEGINNING AND COMPLETION

Services shall begin upon full execution of this Contract by the City, and delivery of a fully executed copy of the Contract to the Contractor. Contractor shall adhere to schedules and deadlines agreed to by City and Contractor shown in Exhibit A. Contractor's failure to complete the above services within the time specified, due to avoidable delays, may at the City's discretion be considered a material breach of this Contract. Contractor shall review the remaining work and schedule of performance at least monthly and shall confirm that completion may be expected within the schedule approved, or in the alternative, give immediate notice when it shall first appear that the approved schedule will not be sufficient, together with an explanation for any projected insufficiency of delays in the schedule. No extension of time to complete any portion of the services called for in the Contract shall be allowed except upon the express, written approval of the Public Works Director. Contractor shall request, in writing, a time extension for approval by City, promptly upon the occurrence of any action causing delay in Contractor's prosecution of the services. The nature of the delay, the corrective actions taken and the impacts on the project schedule shall be described in each request for a time extension.

5. OWNERSHIP OF DOCUMENTS

All documents, computer programs, plans, renderings, charts, designs, drafts, surveys and other intellectual property which is originally developed by Contractor pursuant to this Contract shall become the property of City upon full and complete compensation to Contractor for services performed herein. Contractor will take such steps as are necessary to perfect or to protect the ownership interest of the City in such property. Contractor may retain copies of said documents for Contractor's file.

6. ASSIGNMENT OF CONTRACT

Contractor shall not assign, sublet or transfer any right, privilege or interest in this Contract, or any part thereof, without prior written consent of City. Contractor shall not substitute personnel designated in the proposal of Contractor without the written consent of City.

7. OFFICIAL NOTICES

Notices to either party shall be provided by personal delivery or by depositing them in the United States mail, first class postage prepaid, and addressed as identified at the signature page of this Contract. A party may change mailing address for all purposes under this Contract, by written notice.

8. DEFENSE, INDEMNITY AND HOLD HARMLESS

As part of the consideration for this Contract, Contractor shall provide the following:

a. Contractor shall, to the extent permitted by law, investigate, defend, indemnify, and hold harmless the City, its officers, employees, and agents from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges, and expense (including reasonable attorney fees), and causes of action of whatsoever character (hereinafter collectively referred to as "claims") which the City may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed under this Contract, except to the extent a claim arises from a professional error or omission.

b. With respect to those claims arising from a professional error or omission, the following indemnification shall be applicable: Contractor shall investigate, defend, indemnify and hold harmless the City, its officers, agents, and employees from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges, and expenses (including reasonable attorney's fees) and causes of action of whatsoever character which City may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or due to the professionally negligent acts, errors or omissions of Contractor.

9. INSURANCE REQUIREMENTS

As part of the consideration for this Contract, Contractor shall purchase and maintain at its sole cost and expense during the term of this Contract the following insurance with insurers that are satisfactory to the City:

a. Combined single limits of not less than one million (\$1,000,000) dollars of Comprehensive General Liability Insurance, including Bodily Injury and Property Damage and one million (\$1,000,000) dollars of Comprehensive Automobile Liability Insurance, including Bodily Injury and Property Damage. This insurance shall include:

(1) Extension of coverage to the City, its officers, agents and employees, as additional insureds, with respect to Contractor's liabilities hereunder in insurance coverages identified above;

(2) A provision that coverage will not be canceled or subject to reduction until at least thirty (30) days' prior written notice has been given to the City Clerk, addressed to P.O. Box 1990, Santa Barbara, California 93102-1990;

(3) A provision that Contractor's insurance shall apply as primary, and not excess of, or contributing with, the City;

(4) Contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the Contractor in the indemnity and hold harmless provisions (Section 8) of these Standard Conditions;

(5) A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each;

(6) A broad form property damage endorsement; and,

(7) A provision that the policies be provided on an "occurrence" basis.

b. Statutory Workers' Compensation and Employer's Liability Insurance, with an insurance company acceptable to City, which shall cover all employees while performing any work incidental to the performance of this Contract;

c. Professional Liability: Professional liability "errors and omission" insurance with minimum liability of not less than one million (\$1,000,000) to cover all services rendered by the Contractor pursuant to this Contract.

d. Approval of insurance by the City or acceptance of the certificate of insurance by City shall not relieve or decrease the extent to which the Contractor may be held responsible for payment of damages resulting from Contractor's services or operation pursuant to the Contract, nor shall it be deemed a waiver of City's rights to insurance coverage hereunder.

e. Current Certificates of Insurance on forms supplied by the City and evidencing the above coverage, shall be completed by Contractor's insurer or its agent and submitted to City prior to execution of this Contract by City. Contractor shall exercise due diligence to require any and all subcontractors and all tiers of such subcontractors to provide General and Automobile Liability, and Workers' Compensation and Employers' Liability Insurance with minimum limits of coverage and upon terms and provisions required in this Contract.

10. TERMINATION

This Contract may be terminated with or without cause by either party at any time by giving the other no less than thirty (30) days notice in writing. In the event of such termination, Contractor shall deliver all programs, drawings, surveys, drafts, plans, work in progress and other documents related to the project to the City within five (5) days of the notice of termination. In the event of such termination, Contractor shall be

compensated for such services as are performed and work product delivered to the City up to the point of termination.

11. RIGHT TO PERFORM SIMILAR SERVICES

Nothing in this Contract shall restrict the City from providing the same or similar services through City employees, other contractors, other resources, or by arrangements with other agencies. Contractor may engage in similar activities to the extent that such work does not conflict with the proper performance of services under this Contract.

12. CONFLICT OF INTERESTS

Contractor warrants by execution of this Contract that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingent fee, and that Contractor maintains no agreement, employment, or position which would be in conflict with the duties to be performed for City under this Contract. Contractor further agrees that during the term of this Contract, Contractor will not obtain, engage in, or undertake any interests, obligations or duty that would be in conflict with, or interfere with, the services or duties to be performed under the provisions of this Contract.

13. ADMINISTRATION OF EMPLOYMENT

Contractor shall obtain and administer the employment of personnel having the background, training, experience, licenses and registration necessary for the work assigned, including all coordination, the withholding of proper taxes and benefits, the payment of wages, employer's contributions for FICA, and Federal and State unemployment payments, and the review and maintenance of any necessary licenses, certificates, memberships and other qualifications necessary for the services to be provided. Contractor is an independent contractor and shall not be considered an agent or employee of the City for any purpose. Contractor and its employees and agents are not entitled to any of the benefits or privileges that the City provides its employees.

14. BUSINESS TAX CERTIFICATE

Prior to the execution of the Contract, Contractor shall obtain a business tax certificate from the City at Contractor's expense. Contractor shall maintain a business tax certificate as required by the City Finance Director during the term of this Contract.

15. NO WAIVER OF PROVISIONS

No waiver of a breach of any provision of this Contract shall be construed to be a continuing waiver of that provision, nor a waiver of any breach of another provision of this Contract.

16. APPLICABLE LAWS, PARTIAL INVALIDITY

This Contract shall be subject to the Santa Barbara City Charter, and the laws, rules, regulations and ordinances in effect within the City of Santa Barbara, County of Santa Barbara, California, and any interpretation of the law that may be necessary shall be pursuant to the laws applicable within that jurisdiction. If any provision of this Contract

is determined to be invalid, illegal or unenforceable for any reason, that provision shall be deleted from this Contract and such deletion shall in no way affect, impair, or invalidate any other provision of this Contract, unless it was material to the consideration for the performance required. If a provision is deleted which is not material to such consideration, the remaining provisions shall be given the force and effect originally intended.

17. NON-DISCRIMINATION ORDINANCE

Contractor shall perform all work pursuant to this Contract in compliance with Section 9.126.020 of the Santa Barbara Municipal Code (a copy of which is attached as Exhibit B), prohibiting unlawful discrimination in employment practices, and shall be bound by the terms of such ordinance.

18. CITY SERVICE CONTRACTOR MANDATORY MINIMUM WAGE

a. Chapter 9.128 of the Santa Barbara Municipal Code establishes a mandatory minimum wage for employees of contractors providing services to the City. In the performance of this Agreement, Contractor and any subcontractor, agent, or assignee of Contractor under this Agreement shall comply with the provisions of Chapter 9.128 of the Municipal Code as such Chapter existed upon the adoption of this Agreement or the last date this Agreement was amended.

b. Current Living Wage Certificates on forms supplied by the City shall be completed by Contractor, submitted to City prior to execution of this Contract by City, and attached as Exhibit C. Contractor shall require any and all subcontractors and all tiers of such subcontractors to provide Living Wage Certificates as required by Santa Barbara Municipal Code Chapter 9.128.

IN WITNESS WHEREOF, the parties have executed this contract as of the date and year first written above.

CITY OF SANTA BARBARA
A Municipal Corporation

Entity Name

Christine F. Andersen
Public Works Director

Signature

ATTEST:

Type or Print Name

Cynthia M. Rodriguez, CMC
City Clerk Services Manager

Title

APPROVED AS TO CONTENT:

Address

R. Patrick Kelly
Asst. PW Director/City Engineer

City State Zip

Telephone Number

APPROVED AS TO FORM:
Stephen P. Wiley
City Attorney

By:_____

Business Tax Compliance:
Certificate No. _____

By:_____

Approved as to Insurance:

Mark Howard
Interim Risk Manager

EXHIBIT A

Contractor's Nondiscriminatory Employment Certificate

CONTRACTOR'S NONDISCRIMINATORY EMPLOYMENT CERTIFICATE
Santa Barbara Municipal Code § 9.126.020

A. Certificate Generally

Consistent with a policy of nondiscrimination in employment on contracts of the City of Santa Barbara and in furtherance of the provisions of Section 1735 and 1777.6 of the California Labor Code a "contractor's obligation for nondiscriminatory employment certificate" as hereinafter set forth shall be attached and incorporated by reference as an indispensable and integral term of all bid specifications and contracts of the City for purchases, services, and the construction, repair, or improvement of public works.

B. Contents of Certificate

The Contractor's obligation for nondiscriminatory employment is as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. The Contractor will take positive action or ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. Such action shall include but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification.
3. The Contractor will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City advising the said labor union or workers' representative of the Contractor's commitments under this provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the City, the Fair Employment Practices Commission, or any other appropriate agency of the State designated by the City for the purposes of investigation to ascertain compliance with the Contractor's Obligation for Nondiscriminatory Employment provisions of this contract, or Fair Employment Practices statute.

5. A finding of willful violation of the nondiscriminatory employment practices article of this contract or of the Fair Employment Practices Act shall be regarded by the City as a basis for determining that as to future contracts for which the Contractor may submit bids, the Contractor is a "disqualified bidder" for being "non-responsible".

The City shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the Contractor has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426 or obtained an injunction under Labor Code Section 1429.

Upon receipt of any such written notice, the City shall notify the Contractor that unless he demonstrates to the satisfaction of the City within a stated period that the violation has been corrected, he shall be declared a "disqualified bidder" until such time as the Contractor can demonstrate that he has implemented remedial measures, satisfactory to the City, to eliminate the discriminatory employment practices which constituted the violation found by the Fair Employment Practices Commission.

6. Upon receipt from any person of a complaint of alleged discrimination under any City contract, the City Administrator shall ascertain whether probable cause for such complaint exists. If probable cause for the complaint is found, the City Administrator shall request the City Council to hold a public hearing to determine the existence of a discriminatory practice in violation of this contract.

In addition to any other remedy or action provided by law or the terms of this contract, the Contractor agrees that, should the City Council determine after a public hearing duly noticed to the Contractor that the Contractor has not complied with the nondiscriminatory employment practices provisions of this contract or has willfully violated such provisions, the City may, without liability of any kind, terminate, cancel, or suspend this contract, in whole or in part. In addition, upon such determination the Contractor shall, as a penalty to the City, forfeit a penalty of \$25.00 for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance. Such moneys shall be recovered from the Contractor. The City may deduct any such penalties from any moneys due the Contractor from the City.

7. The Contractor certifies to the City that he has met or will meet the following standards for positive compliance, which shall be evaluated in each case by the City:
 - a. The Contractor shall notify all supervisors, foremen and other personnel officers in writing of the content of the nondiscrimination provision and their responsibilities under it.
 - b. The Contractor shall notify all sources of employee referrals (including unions, employment agencies, advertisements, Department of Employment) of the content of the nondiscrimination provision.
 - c. The Contractor shall file a basic compliance report as required by the City. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also specify the sources of the work force and who has the responsibility for determining whom to hire, or whether or not to hire.
 - d. The Contractor shall notify the City of opposition to the nondiscrimination provision by individuals, firms or organizations during the period of this contract.
8. Nothing contained in this Contractor's Obligation for Nondiscriminatory Employment Certificate shall be construed in any manner to prevent the City from pursuing any other remedies that may be available at law.

9. The Contractor certifies to the City that he will comply with the following requirements with regard to all subcontractors and suppliers:
 - a. In the performance of the work under this contract, the Contractor will include the provisions of the foregoing paragraphs (1) through (8) in all subcontracts and in any supply contract to be performed within the State of California, so that such provisions will be equally binding upon each subcontractor and each supplier.
 - b. Contractor will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction by the City, the Contractor may request the City to enter into such litigation to protect the interests of the City.

EXHIBIT B

Contractor's Living Wage Certificate

LIVING WAGE CERTIFICATION

Official notification to: _____

The service contract that is pending between your company and the City of Santa Barbara is subject to the City of Santa Barbara Living Wage Ordinance, SBMC Chapter 9.128 (hereinafter referred to as "the Ordinance"). Pursuant to this ordinance, you are hereby notified that your company is required to demonstrate compliance by **completing and returning the attached compliance statement. This statement must be completed and returned before contract commencement.** You may fax the compliance statement to: either the requesting department or to the City of Santa Barbara Finance Department (Purchasing) at (805) 897-1977.

Please Note: Current living wage rates will apply to all subsequent contracts and amendments during the remainder of the current fiscal year ending June 30, 2010.

The City of Santa Barbara Living Wage Ordinance was adopted on April 4, 2006 (Ordinance number 5384). All capitalized terms used herein are used as defined in the Ordinance. The Ordinance requires that persons directly working on City of Santa Barbara contracts, for services specified in the ordinance, are to be paid a living wage while working on the City of Santa Barbara contract. The Ordinance only applies to those persons directly providing services to the City and does not apply to administrative or support staff employees of a Service Contract, such as administrators, payroll, personnel, or similar employees. The Ordinance also does not apply to employees who are Handicapped, Apprentices, Learners, or Student Interns, who are otherwise part of an employer's training program as those terms are defined in the Ordinance. The Ordinance also states that employees have the right to expressly negotiate and agree to wage and benefit levels different than those required by the Ordinance.

The Ordinance requires that employees working for your firm on this contract be notified that the City of Santa Barbara Living Wage Ordinance applies to them. As part of compliance for this contract, you are required to notify affected employees.

Effective from July 1, 2009, through June 30, 2010, the current rate for minimum compensation to employees is:

- 1. If Basic Medical Insurance and Compensated Holidays are provided to the Employee, a wage of no less than \$12.94 per hour.**
- 2. If Supplemental Employee Benefits are provided to the Employee, a wage of no less than \$11.86 per hour.**
- 3. If benefits are not provided to an Employee, a wage of no less than \$15.10 per hour.**

(All capitalized terms used herein are used as defined in the Ordinance, SBMC Chapter 9.128)

Also be advised that the City may request any or all certified payrolls associated with this contract, however, any such request will be made to your firm in writing and provide fourteen calendar days to respond. The City may also conduct on-site audits to verify compliance. These audits may include, but are not limited to, employee interviews.

Direct questions regarding this Ordinance to General Services Manager, City of Santa Barbara Finance Department, P.O. Box 1990, Santa Barbara, CA 93102.

1. *Select A, B C or D below.

- ☐ **A.** All employees working on the City of Santa Barbara contract are in the following exempt category:_____

** Attach verification information and complete the certification portion on page 3.*

- ☐ **B.** Employees working on City of Santa Barbara contracts receive a pay rate that meets or exceeds the City of Santa Barbara Living Wage requirement of \$15.10 per hour without benefits.

** Complete items #2, #3, #4, #5 and the certification portion on page 3.*

- ☐ **C.** Employees working on City of Santa Barbara contracts receive a pay rate that meets the City of Santa Barbara Living Wage requirement of \$12.94 per hour with the following benefits:

1. A combined twelve days compensated leave time annually for full-time employees, and prorated leave for employees working less than full time
2. Basic Medical Insurance Coverage for the Employee.

** Complete items #2, #3, #4, #5 and the certification portion on page 3.*

- ☐ **D.** Employees working on City of Santa Barbara contracts receive a pay rate that meets the City of Santa Barbara Living Wage requirement of \$11.86 per hour with all of the following benefits:

1. A combined twelve days compensated leave time annually for full-time employees, and prorated leave for employees working less than full time
2. Basic Medical Insurance Coverage for the Employee.
3. Basic Medical Insurance Coverage for the Employee's spouse, domestic partner or family.
4. One additional Supplemental Benefit as defined in the Ordinance.
 - ☐ Pension or deferred compensation retirement plan.
 - ☐ Childcare or dependent care.
 - ☐ Equivalent of ten (10) eight hour days of compensated leave over and above the compensated leave in item 1.
 - ☐ Other:_____

** Complete items #2, #3, #4, #5 and the certification portion on page 3.*

- 2.** Will any subcontractors perform work on this contract? ☐ **Yes** ☐ **No**

If yes, please indicate company(s) on an additional page.

- 3.** Will you post the enclosed employee notification form in an area accessible to employees working on City of Santa Barbara contracts? ☐ **Yes** ☐ **No**

- 4.** You may be required to provide certified payroll records any time during the contract period. These payroll records must include the following information for each employee working on this contract: employee name, job classification, employer benefit contribution, and hourly pay under this contract.

Do you agree to provide this information within 14 calendar days when requested? ☐ **Yes** ☐ **No**

The City may also perform on site payroll audits that may include, but are not limited to, employee interviews.

5. a) Please quantify the aggregate affect that the Living Wage requirements had on your bid price (i.e., no cost affect, increase bid price by \$..., etc.)?

b) How many employees benefited from the living wage requirement? _____

c) Annual aggregate wage increase for the group. \$_____

The signatory below hereby certifies, under penalty of perjury, that the forgoing information is correct:

Company Name

Company Address, City, State, Zip

Contact Name, Phone number, Fax number

Name and Title (Please print), Signature

Date

EXHIBIT C

Certificate of Insurance

CERTIFICATE OF INSURANCE

This certifies to the City of Santa Barbara, P.O. Box 1990, Santa Barbara, California, 93102-1990, that the following described policies have been issued to:

Insured:
Address:
Location of operations insured:

Description of work (show project name and/or number, if any):

POLICIES AND INSURERS	LIMITS		POLICY NUMBER	EXPIRATION DATE
Comprehensive General Liability (Insurer)	Bodily Injury	Property Damage		
	Each Person	Each Occurrence		
	Each Occurrence	Aggregate		
Comprehensive Automobile Liability [] Owned [] Hired [] Non-Owned (Insurer)	Combined Single Limit			
	Each Person	Each Accident		
	Each Occurrence			
Professional Liability • Errors & Omissions • Malpractice (If Applicable) • Negligent Performance (Insurer)	Combined Single Limit			
	Each Person	Each Accident		
	Each Occurrence	Aggregate		
Workers' Compensation (Insurer)	Combined Single Limit			
	STATUTORY			
The following coverage or conditions are in effect:	Employer's Liability \$			

1. City of Santa Barbara, its Officers, Employees, and Agents Named as Additional Insured.	Yes	No
2. Policies will not be Canceled, Limited, or Allowed to Expire Without 30 Days Written Notice to the City Clerk, P.O. Box 1990, Santa Barbara, CA 93102-1990		
3. Coverage afforded the City shall Apply as Primary & Not Excess to Any Insurance Issued in the Name of the City.		
4. Blanket or Scheduled Contractual Liability Sufficiently Broad to Cover Liability Assumed in Contract.		
5. Cross Liability Clause.		
6. Broad Form Property Damage Endorsement.		
7. X, C, U Hazards Included.		
8. Products and Completed Operations.		
9. Longshoremen's Harbor Workers' Act.		
10. Other (specify).		

Date: _____

At: _____

(Authorized Signature)

(Print Name)

(Company and Address)

NOTE: Authorized signature may be the agent if agent has placed insurance through an agency agreement with the Insurer.
If insurance is brokered, authorized signature must be that of official of Insurer.